

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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JOSEPH M.L. GARDNER,

Petitioner,

-versus-

JON OZMINT, COMMISSIONER,
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS,

Respondents.

C. A. No. 2:05-1647-HMH-RSC

OPINION and ORDER

Petitioner, through his attorney, has moved pursuant to 28 U.S.C. § 4555 for the disqualification of the undersigned from any further participation in this matter.


The basis for Petitioner's motion is the undersigned's order filed February 17, 2006, which contains a verbatim email from a staff member of Judge Herlong's office and my secretary. The quoted language accurately sets forth the scheduling concerns and time constraints for a final order in this matter.

In discussing the possibilities of an objection to a report and recommendation which may be filed by either party, the communication mentions that "the petitioner is likely to request an extension of time." Petitioner argues that the language implies a preconceived conclusion that the Petitioner will not prevail.

The undersigned has reviewed the petition and the Respondents' motion for summary judgment. However, the undersigned has not discussed the merits of this case with anyone

else and has no preconceived thoughts about the merits of the case.

The undersigned is not in any way prejudiced against the Petitioner, but, out of an abundance of caution and to avoid any appearance of impropriety, the undersigned disqualifies himself pursuant to 28 U.S.C. § 4555.


Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

February 23, 2006